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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 CR 811 (ALC)

5 ALVERADO DOMINQUEZ,

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 16, 2014
10:50 a.m.

10 Before:

11 HON. KEVIN N. FOX,

12 Magistrate Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

KAN M. NAWADAY

17 Assistant United States Attorney

18 IRA D. LONDON, ESQ.

19 Attorney for Defendant

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: United States v. Alvarado
4 Dominguez. Counsel, please state your appearances for the
5 record.

6 MR. NAWADAY: Good morning, your Honor, Kan Nawaday
7 for the government.

8 MR. LONDON: Good morning, your Honor. Ira London for
9 Alvarado Dominguez.

10 THE COURT: Good morning. Is there an application on
11 behalf of the defendant?

12 MR. LONDON: The application is to withdraw his plea
13 of not guilty and enter a plea of guilty pursuant to the plea
14 agreement.

15 THE COURT: The indictment in this case is a multi
16 count indictment. Is your client's position that he is
17 tendering a plea of guilty to all counts of the indictment?

18 MR. LONDON: No. Counts One and Two.

19 THE COURT: All right. Thank you very much.

20 Mr. Dominguez, I have before me indictment 13 CR 811,
21 which as I indicated a moment ago is a multi count indictment.
22 We shall be focusing on Counts One and Two during this
23 morning's proceeding. You have a right to have this morning's
24 proceeding presided over by a district judge. You may if you
25 wish consent to have a magistrate judge preside at this

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1 morning's proceeding and in that connection I have before me a
2 document labeled Consent to Proceed Before a United States
3 Magistrate Judge for a Felony Plea Allocution.

4 Will you swear in the defendant, please?

5 (Defendant sworn)

6 THE COURT: Mr. Dominguez, I want to show you the
7 consent form about which I was speaking. Do you recognize the
8 document?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you have an opportunity to review it
11 with your attorney?

12 THE DEFENDANT: Yes.

13 THE COURT: Is there anything contained in the consent
14 form that you do not understand?

15 THE DEFENDANT: No.

16 THE COURT: Do you acknowledge that the consent form
17 explains in greater detail what I mentioned to you a moment ago
18 about your right to have this proceeding presided over by a
19 district judge and confirm that by signing the document you are
20 agreeing that a magistrate judge may preside at this morning's
21 proceeding?

22 THE DEFENDANT: Yes.

23 THE COURT: Is your true signature on the consent
24 form?

25 THE DEFENDANT: Yes.

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1 THE COURT: Did anyone force you to sign the document?

2 THE DEFENDANT: No.

3 THE COURT: Let me turn my attention to your counsel.

4 Is your signature also at the bottom of the consent form,

5 Mr. London?

6 MR. LONDON: Yes.

7 THE COURT: Thank you. I shall sign the document and
8 then we shall continue.

9 Mr. Dominguez, what is your full name?

10 THE DEFENDANT: Alvarado Dominguez.

11 THE COURT: What is the last year in school that you
12 completed?

13 THE DEFENDANT: Tenth.

14 THE COURT: Are you under the care of a physician or
15 psychiatrist for any condition?

16 THE DEFENDANT: No.

17 THE COURT: Have you ever been treated for alcoholism
18 or drug abuse?

19 THE DEFENDANT: No.

20 THE COURT: Have you within the last 24 hours consumed
21 any medicine, alcohol or drugs that would affect your ability
22 to understand what you're doing here today?

23 THE DEFENDANT: No.

24 THE COURT: Do you feel all right today?

25 THE DEFENDANT: Yes.

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1 THE COURT: Have you received a copy of indictment 13
2 CR 811?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you wish to have the indictment read to
5 you now in open court?

6 THE DEFENDANT: No.

7 THE COURT: Do you understand what it says that you
8 did at Counts One and Two of the indictment?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you had sufficient opportunity to
11 speak with your attorney about the charges contained in Counts
12 One and Two of the indictment and how you wish to plead to
13 them?

14 THE DEFENDANT: Yes.

15 THE COURT: Are you satisfied with the assistance that
16 your attorney has rendered to you in connection with this
17 matter?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Are you ready to plead to Counts One and
20 Two of indictment 13 CR 811; Count One charging a violation of
21 Title 18, United States Code, Sections 2118(d) and 3147 and
22 Count Two charging a violation of Title 21, United States Code,
23 Section 846?

24 THE DEFENDANT: Yes.

25 THE COURT: What is your plea, sir; guilty or not

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1 guilty to Counts One and Two of the indictment?

2 THE DEFENDANT: Guilty.

3 THE COURT: Are you a United States citizen?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that by pleading guilty
6 to the offenses set forth at Counts One and Two of the
7 indictment, you may be giving up certain valuable civil rights
8 that you possess, including, among others, the right to vote,
9 the right to hold public office, the right to serve on a jury,
10 the right to possess any type of firearm, including rifles and
11 shotguns; the right to be considered for certain types of
12 employment and the right to possess or obtain certain
13 professional licenses?

14 THE DEFENDANT: Yes.

15 THE COURT: Also, because the offense set forth at
16 Count Two of the indictment involved a violation of Title 21 of
17 the United States Code, pursuant to Section 862 of that title
18 of the United States Code, that is, Title 21, by your plea of
19 guilty you may be giving up your entitlement to certain
20 benefits which you might otherwise be entitled, including,
21 among others, the following: Social Security, food stamp
22 benefits, education loans or grants and public housing or
23 housing subsidies. Do you understand, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: I have to determine whether your plea of

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1 guilty is being made voluntarily and whether you understand
2 fully the charges made against you and the possible
3 consequences of your plea, so I shall be asking you additional
4 questions. I first want to insure that you understand the
5 nature of the charges made against you.

6 Count One of the indictment charges you with
7 participating in a conspiracy to burglarize pharmacies of
8 controlled substances. As I indicated earlier, it's alleged to
9 be a violation of Title 18, United States Code, Section
10 2118(d). The law provides a maximum penalty for the offense
11 set forth in Count One of the indictment as follows: A maximum
12 term of imprisonment of ten years; a maximum term of supervised
13 release of three years; a maximum fine pursuant to Title 18,
14 United States Code, Section 3571 of the greatest of \$250,000,
15 twice the gross pecuniary gain derived from the offense, or
16 twice the gross pecuniary loss to persons other than yourself
17 resulting from the offense and a \$100 mandatory special
18 assessment.

19 If you are sentenced to a term of supervised release
20 and violate the terms and conditions of that supervised
21 release, such that it is revoked, you expose yourself to
22 serving in prison all or part of the term of supervised release
23 authorized by statute for the offense that resulted in such
24 term of supervised release without credit for time previously
25 served on post-release supervision.

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1 Sir, do you understand the nature of the charge made
2 against you in Count One of the indictment?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you understand the range of
5 penalties, including the maximum penalty to which you are
6 potentially exposing yourself by your plea?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Count Two of the indictment charges you
9 with participating in a conspiracy to distribute and possess
10 with intent to distribute controlled substances in violation of
11 Title 21, United States Code, Section 846 and 841(b)(1)(c).
12 The law provides as a maximum penalty for the offenses set
13 forth at Count Two of the indictment the following: A maximum
14 term of imprisonment of twenty years; a maximum term of
15 supervised release of life; a maximum fine pursuant to Title
16 21, United States Code, Section 841(b)(1)(c) of \$1 million and
17 a mandatory \$100 special assessment. If you are sentenced to a
18 term of supervised release and violate the terms and conditions
19 of that supervised release such that it is revoked, the same
20 consequences that I reviewed with you with respect to Count One
21 of the indictment would befall you with respect to Count Two of
22 the indictment, so I shall not repeat that to you.

23 Sir, do you understand the nature of the charge made
24 against you at Count Two of the indictment?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And do you understand the range of
2 penalties, including the maximum sentence to which you are
3 potentially exposing yourself by your plea of guilty to Count
4 Two of the indictment?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: The indictment also contains a forfeiture
7 allegation which the government has indicated would seem to
8 recoup the proceeds of certain illegal conduct that's described
9 in the indictment. Are you aware that the indictment contains
10 a forfeiture allegation?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Sir, do you understand that you have a
13 right to plead not guilty and to have a jury trial on the
14 charges contained at Counts One and Two of indictment 13 CR
15 811?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that if you plead not
18 guilty and go to trial, the burden would be upon the government
19 to prove that you were guilty beyond a reasonable doubt?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that at a trial you
22 would be presumed innocent until the government proved your
23 guilt beyond a reasonable doubt?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that at such a trial and

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1 at every other stage of the proceeding you would have the right
2 to be represented by an attorney and if necessary the Court
3 would appoint an attorney to represent you?

4 THE DEFENDANT: Yes.

5 THE COURT: You also understand that at a trial you
6 have the right to testify, to confront and question any
7 witnesses who might testify against you, and the right not to
8 be forced to incriminate yourself because you do not have to be
9 a witness against yourself?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that at a trial you
12 would be entitled to call witnesses to testify and to compel
13 the attendance of witnesses?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if you plead guilty
16 there will be no trial of any kind so that you give up your
17 right to a trial and the only remaining step would be for the
18 assigned district judge to sentence you?

19 THE DEFENDANT: Yes.

20 THE COURT: Sir, are you certain that you understand
21 the nature of the charges to which you are pleading guilty?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And are you certain that you understand
24 the range of penalties, including the maximum sentences to
25 which you are potentially subjecting yourself by your plea?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that the sentencing
3 judge may be obligated to impose a special assessment on you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: What are the elements of the offenses set
6 forth at Counts One and Two of the indictment?

7 MR. NAWADAY: Yes, your Honor. Count One charges the
8 defendant with conspiring to burglarize pharmacies for
9 controlled substances. That crime has the following elements:
10 First, that there was an agreement to burglarize pharmacies for
11 controlled substances. Second, that the defendant knowingly
12 and intentionally joined that agreement. Third, that the
13 conspiracy involved the burglary of more than \$500 worth of
14 controlled substances. Fourth, that as part of the conspiracy
15 an interstate facility such as a cell phone was used. Fourth,
16 that the pharmacies were defined as pharmacies under the law
17 and, fifth, that a member of the conspiracy committed an overt
18 act in furtherance of the conspiracy.

19 Count Two charges the defendant with conspiring to
20 possess with intent to distribute or to distribute controlled
21 substances, in particular, oxycodone. That crime has the
22 following elements: First, that a conspiracy did exist to
23 possess with intent to distribute or to distribute a controlled
24 substance, in particular, oxycodone and, secondly, that the
25 defendant knowingly and intentionally joined that agreement

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1 and, third, that an act in furtherance of the conspiracy
2 occurred in the Southern District of New York.

3 Those are the elements of the offenses, your Honor.

4 THE COURT: With respect to the offense set forth at
5 Count One of the indictment, isn't there a requirement that the
6 larceny involve premises controlled by a person registered with
7 the Drug Enforcement Administration?

8 MR. NAWADAY: Exactly, your Honor. I may have
9 summarized what that element is, but that is an element, that
10 it has to be a pharmacy controlled and registered as, under the
11 statutes, a pharmacy under the, with the Drug Enforcement
12 Administration.

13 THE COURT: All right. Thank you. Mr. Dominguez,
14 having heard the elements of the offenses set forth at Counts
15 One and Two of the indictment, is it still your desire to
16 tender a plea of guilty?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Sir, have you and your attorney talked
19 about how the Sentencing Commission guidelines which are
20 advisory only might inform the sentence to be imposed upon you?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that in determining your
23 sentence the sentencing judge is obligated to calculate the
24 applicable sentencing guidelines range and possible departures
25 under the sentencing guidelines?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that in addition to the
3 sentencing guidelines factors the sentencing judge will also
4 consider factors that are set forth at 18, United States Code,
5 Section 3553 in determining what an appropriate sentence might
6 be for you?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that parole has been
9 abolished and that if you are sentenced to prison you will not
10 be released on parole?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that the answers you
13 give to me today under oath may in the future be used against
14 you in a prosecution for perjury or false statement if you do
15 not tell the truth to the Court?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Sir, do you still wish to plead guilty to
18 Counts One and Two of indictment 13 CR 811?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Have any threats been made to you by
21 anyone to influence you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Have any promises been made to you
24 concerning the sentence you will receive?

25 THE DEFENDANT: No.

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1 THE COURT: I understand that you and your attorney
2 and representatives from the government have reached certain
3 agreements and understandings in connection with your tender of
4 a plea of guilty and those agreements and understandings have
5 been reduced to a writing, specifically a letter dated
6 November 3, 2014 addressed to Ira D. London, your attorney. I
7 have a copy of that document before me which I shall show you
8 now. Do you recognize the document, sir?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Did you have an opportunity to review it
11 with your attorney?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Is there anything contained in the
14 November 3, 2014 writing that you do not understand?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Among other things, there is text in the
17 November 3, 2014 writing through which you admit the forfeiture
18 allegations that I reviewed with you earlier that are part of
19 the indictment. Are you aware that such texts exist in the
20 November 3, 2014 writing?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And are you aware that there is a specific
23 quantity of money and specific property outlined in the
24 November 3, 2014 writing that you commit to forfeiting to the
25 government?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: There is also an analysis of the
3 Sentencing Commission guidelines in the November 3, 2014
4 writing. Are you aware that the writing contains that analysis
5 of the guidelines?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that notwithstanding the
8 analysis of the Sentencing Commission guidelines that are in
9 the November 3, 2014 writing, the impact, if any, that the
10 Sentencing Commission guidelines may have on the sentence to be
11 imposed on you is left solely to the discretion of the
12 sentencing judge?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: There is text in the November 3, 2014
15 writing that constricts your ability to appeal from or
16 collaterally attack the judgment of conviction or sentence that
17 might be imposed upon you. Are you aware of that, sir?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: There is also text in the November 3, 2014
20 writing that prohibits you from seeking a sentence modification
21 pursuant to Title 18, United States Code, Section 3582(c). Are
22 you aware of that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: I want to direct your attention to the
25 last page of the November 3, 2014 writing. Is your signature

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1 on the last page of it?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Has anyone forced you to sign the
4 document?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Let me ask your counsel. Mr. London, is
7 that your signature on the last page of the document?

8 MR. LONDON: Yes, your Honor.

9 THE COURT: Have representatives of the government
10 also signed the last page of document?

11 MR. NAWADAY: They have.

12 THE COURT: Mr. Dominguez, other than the agreement
13 that you and your attorney and representatives of the
14 government have reached that are outlined in the November 3,
15 2014 writing about which we've been speaking, have any other
16 agreements or understandings been made or reached with you in
17 connection with your tender of a plea of guilty to Counts One
18 and Two of indictment 13 CR 811?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Sir, is your plea being made voluntarily,
21 that is, of your own free will?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you commit the offenses that are
24 outlined in Counts One and Two of the indictment?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Could you tell me what it is that you did
2 that makes you believe you are guilty of Counts One and Two in
3 the indictment?

4 THE DEFENDANT: In 2011 I agreed with others to
5 burglarize pharmacies for controlled substances.

6 THE COURT: Sir, when was it that you say you agreed
7 with others to burglarize pharmacies?

8 THE DEFENDANT: 2011.

9 THE COURT: Where was it that you agreed with others
10 to engage in that conduct?

11 THE DEFENDANT: In the Bronx.

12 THE COURT: And when you engaged in the conduct that
13 you just described, did you know that what you were doing was
14 wrong?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: With respect to Count Two of the
17 indictment that charges you with conspiring to possess and
18 distribute controlled substances, what if anything can you tell
19 me about that offense and your involvement in it?

20 THE DEFENDANT: I agreed with others to possess and
21 intend to sell and use a controlled substance. In 2011.

22 THE COURT: I want to make sure that I understand
23 correctly. Was your agreement with others to possess and use a
24 controlled substance or possess and distribute a controlled
25 substance in 2011?

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1 THE DEFENDANT: Could you repeat that?

2 THE COURT: Was your agreement with others to possess
3 and use controlled substances in 2011 or was your agreement
4 with others to possess and distribute controlled substances in
5 2011?

6 THE DEFENDANT: Possess and distribute.

7 THE COURT: Thank you. And where was it that you
8 agreed with others to possess and distribute controlled
9 substances in 2011?

10 THE DEFENDANT: In New York.

11 THE COURT: Where in New York?

12 THE DEFENDANT: In Manhattan.

13 THE COURT: And when you agreed with others, as you
14 just described, to possess with intent to distribute controlled
15 substances in Manhattan, did you know that what you were doing
16 was wrong?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Are there any questions the government
19 would have me put to Mr. Dominguez?

20 MR. NAWADAY: Yes, your Honor. First, if your Honor
21 could inquire what the controlled substance was, the object of
22 both Counts One, Counts Two and also if your Honor could
23 inquire whether the defendant or any of his co-conspirators
24 used cellular telephones in connection with Count One, the
25 conspiracy to burglarize pharmacies.

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1 THE COURT: What is the significance of a telephone in
2 connection with Count One?

3 MR. NAWADAY: Your Honor, I believe that is one of the
4 elements is that an interstate facility was used as part of the
5 offense.

6 THE COURT: Mr. Dominguez, let me turn your attention
7 to Count One of the indictment which addresses burglaries and
8 pharmacies. What controlled substance or substances were the
9 object of the conspiracy to burglarize the pharmacy and
10 pharmacies?

11 THE DEFENDANT: Oxycodone, your Honor.

12 THE COURT: And in connection with your agreement with
13 others to burglarize pharmacies as you described earlier, can
14 you tell me whether mobile telephones were used?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Let me direct your attention to Count Two
17 of the indictment charging that you conspired with others to
18 possess and distribute controlled substances. Could you tell
19 me what controlled substance or substances was involved in your
20 agreement with others as referenced with respect to Count Two
21 of the indictment?

22 THE DEFENDANT: Oxycodone, your Honor.

23 THE COURT: Are there any other questions the
24 government would have me put to the defendant?

25 MR. NAWADAY: No, your Honor, but the government would

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1 proffer that the government would be able to prove beyond a
2 reasonable doubt that the pharmacies were registered with the
3 drug enforcement agency as required to charge Count One against
4 the defendant and also that the controlled substances that were
5 stolen were valued at more than \$500.

6 THE COURT: Okay. Mr. London, are you aware of any
7 reason why your client should not plead guilty?

8 MR. LONDON: No, your Honor.

9 THE COURT: Is the government aware of any reason why
10 the defendant should not plead guilty?

11 MR. NAWADAY: No, your Honor.

12 THE COURT: If the case went to trial what evidence
13 would the government offer to prove the charges set forth in
14 Counts One and Two of indictment 13 CR 811?

15 MR. NAWADAY: Yes, your Honor. If the case were to
16 proceed to trial, the government would offer the testimony of
17 cooperating witnesses who participated in both conspiracies
18 with the defendant, law enforcement witnesses, pharmacy
19 witnesses, as well as video surveillance evidence and cell site
20 evidence demonstrating that the defendant participated in a
21 conspiracy to burglarize certain pharmacies in the New York
22 City area during the conspiracy period in order to obtain
23 oxycodone that the conspirators then resold.

24 THE COURT: What would be the substance of testimony
25 presented by law enforcement officers and also pharmacy

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1 personnel?

2 MR. NAWADAY: The substance of that testimony would be
3 in part that the pharmacies were registered at pharmacies
4 under -- with the Drug Enforcement Administration. Law
5 enforcement witnesses would present evidence relating to the
6 actual burglaries, the investigation of the burglaries, as well
7 as video surveillance obtained, as well as cell site evidence
8 obtained.

9 THE COURT: Thank you. I am satisfied that
10 Mr. Dominguez understands the nature of the charges made
11 against him in Counts One and Two of the indictment. I am also
12 satisfied that he understands the consequences of his plea of
13 guilty. I am satisfied that the plea is being made voluntarily
14 and knowingly and that there's a factual basis for the plea.
15 So I shall report and recommend to the assigned district judge
16 that the plea be accepted.

17 I am going to fix a date for sentence and direct the
18 parties to contact the assigned district judge to determine
19 whether that date is convenient for sentencing proceeding.
20 February 17, 2015 will be the date for sentence unless you get
21 different directions from the assigned district judge. I'll
22 direct that a presentence report be prepared prior to that
23 date. I shall direct the government to provide its case
24 summary material to the probation department not later than 14
25 days from today. To aid in the preparation of that report the

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1 defendant and his counsel should make themselves available for
2 an interview with the probation department no later than 14
3 days from today to aid in the preparation of that report.

4 I shall direct the government to obtain a transcript
5 with the minutes generated from this proceeding and present
6 those to the assigned district judge before the date of
7 sentence.

8 Is there any application with respect to bail?

9 MR. LONDON: No, your Honor.

10 THE COURT: Is there anything else that we need to
11 address?

12 MR. NAWADAY: Not for the government.

13 MR. LONDON: Not for the defense.

14 THE COURT: Thank you. Good day.

15 (Adjourned)
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